1952.

Requisitioned Land
File No. (CofP) II
52(N)

Legal Dept
B **BRANCH**
P.8(E)
1952

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Subject:— Notifications under the Requisitioned Land (Continuance of Powers) Act, 1947

File No. Requisitioned Land (CofP) II
52(N)

Gen. 194

53-15

Legal Department .

The Government of India has agreed with the view taken by the R.L.A. in his U.R. No. 5499, dated the 5th April 1951 that as the lands involved were requisitioned by the Central Government they could only be acquired by the said Government ~~thay~~ and not by the State Government who were not the appropriate Government within the meaning of section 5(2) of the Requisitioned Land (Continuance of Powers) Act, 1947 .The Government of India , therefore , holds that the lands in question would continue to be considered still held under requisition.

2. The Government of India thinks that the circumstances set out in clauses (a) and (b) of sub-section (3) of section 5 of the Requisitioned ~~Land~~ Land (Continuance of Powers) Act, 1947, do not exist and that therefore it is not possible to acquire ~~h~~ the said land for the use of the State of Bombay. In view of the legal position stated by the Government of India , there is no other way of getting the said land for the purpose of a Beggars'Home.

Id/-
dt/- 30/1/

Additional Secretary To Government.

U.R. to D.D. No. 1478,dated the 30th January 1952.

V.V.K. 28/6/56/ 5C.

Legal Department.

The R.D. has sent for the scrutiny of the R.L.A. the notification proposed to be issued under the Requisitioned Land (Continuance of powers) Act, 1947, appointing the Civil Judge (Senior Division), Poona, as arbitrator to determine the amount of compensation payable in respect of land which has been acquired by the Collector of Poona under his notice No. MIL /674 dated the 14th April 1948 on behalf of the Central Government.

2. Under section 8 of the Act of 1947 (now repealed) the Central Government had been empowered to delegate its power under the Act to such officer as may be specified by them. Under this section all the Collectors of State of Bombay had been delegated he power to acquire land on behalf of the Central Government. The land which is the subject matter of the proposed notification has been acquired by the Collector of Poona of behalf of the Central Government. Under sub-section (3) of section 6 of the repealed Act, the State Government was competent to appoint an arbitrator even in cases where the land was requisitined or acquired for and on behalf of the Central Government by the Collectors of the Bombay State. ~~Thexpowexpressex~~ The power to appoint an

An arbitrator has now been reserved under section 8(b) of the Act of 1952 o the central Government Secion 17 of the Act ,however, provides that the Central Government may direct that the powers exercisable by it under this Act shall be exercisable also by an officer subordinate to that Government or the State Go ernment. The Act of 1947 having been repealed and there being no provision corresponding to section 6(3) of the repealed Act, the power of the State Government to appoint an arbitrator being inco nsistent with the provisions of the new Act, must be deemed to have come to an end along with the repealed Act. It is not , therefore, competent for the Government of Bombay to appoint an arbitrator in this case. The proposal will have to be referred to the Central Government for taking necessary action under section 8 of the Act.

Id/-
dt/- 9-4-

Additional Secretary to Governments.

U.R. to R.D. No. 5403 ,
dated the 10th April 1952 .

V.v.k. 28/4/ 6/56/
5C .

OFFICE OF THE R.L.A.

We may agree with the view taken by the Government of India in thier letter of 16th June 1952 at page 43 ante.

It may be possible to read clause (b) of the proviso to sub-section (2) of section 24 of the Requisitioning and Acquisition of Immoveable Property Act, 1952 , as a fresh section adding to and not merely qualifying what goes before (cf. Rhondda v. Taff Vale, 1909 A. C. 253 at p. 258).But even so, clause (b) will be of no help. That clause provides that anythigg done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Act or the said Ordinance shall, in so far as it is not inconsistent with the provisons of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing wasdone or acton was taken.The thing done or action taken which is referred to in clause (b) is the one taken in the present case in exercise of the powers confe red by or under the Requisitioned Land (Continuance of Powers) Act. 1947.The action taken in this case was to acquire the land in question under section 5 of the Requisiti ned Land (Continuance of Powers) Act, 1947. Under that sect on it was not necessary to hear theperson whose property was proposed to be acquired before passing any order for acquiring the same bnt this important right of being heard is conferred by the Requisitioning andAcquisition of Immoveable Property Act, 1952 (See section 7, Proviso). Moreover, the principles for determining the compensation payable under thenew Act of 1952and the repealed Act of 1947 are not the same (df. sub-section (3) of section 8 of thenew Act and section 6(3)

of the repealed Act read with section 19(1)(e) of the Defence of India Act, 1939). In view of the substantial difference in the aforesaid provisions of the repealed and the new Act it cannot be considered that the action taken under the repealed Act is not inconsistent with the provisions of the new Act of 1952. It will be necessary, therefore, to fall back upon the provisions of section 6 of the General Clauses Act, 1897. In view of clauses (c) and (e) of that section, the procedure laid down in sub-section (3) of section 6 of the repealed Act of 1947 shall apply in the matter of appointment of an arbitrator. Under that sub-section (3), such of the provisions as relate to matters of procidure continue to be in force for the purposes of sub-section (2) of section 6 of the repealed Act. Clause (b) of sub-section (1) of section 19 of the Defence of India Act empowered the Central Government to appoint an arbitrator. The power of the Central Government to appoint an arbitrator under clause (b) of sub-section (1) of section 19 of the Defence of India Act has been delegated to the State Government under section 124 of the Government of India Act and that delegation is saved under the Constitution. It would bi, therefore, open to the State Government to appoint an arbitrator in the present case as advised by the Government of India. The draft notification as amended at page 31 ante is in order.

Id/- P.M.L.
dt/- 26/9/

Remembrancer of Legal Affairs.

U. R. to R.D.No. 15876 / B , dated the 26th September 1952 .

V.v.k - 28/6/56/

5C.

Legal Department.

The Revenue Department in its note on p. 141 ante has referred to three cases in which the requisitioned lands are proposed to be acquired .The three cases are referred to in Collector of Poona's report on p- 37 ante. From that report it appears that the lands in each of those three cases were originally requisitioned for the Military authorities in 1942, 1943 and 1944. It is stated that these lands have been permanently transferred by the Military Department to the State Government and are being used for State purposes.The land in Aundh Taluka in the Poona City is in charge of the Director of Veterinary Science and Animal Husbandry Poona.The oth r two lands referred to on page 37 are in the charge of the Executive Engineer, Po ona Divisio n and the Inspector General of Police , Poona, respectively. Obviously these lands were requisitioned under rule 75A of the Defence of India Rules. That rule provided that when any property is requisitioned the Government which requisitioned it may use or deal with the pro perty in such manner as may appear to it expedient.Thereafter these lands continued under requisition under section 3 of the Requisitioned Land (Continuance of Powers)Act, 1947.That section also provides that the appropriate Govt. may use or deal with any requisitioned land

in such maner as may appear to it to be expedient. It is true that it is not clear from these papers when the lands were transferred to the State Government , but since both rule 75A as well as section3 of the aforesaid Act empowered the appropriate Government to deal with the requisitioned land in such manner as it thought fit, the transfer of lands in question to the State Government was, therefore , legally in order.The Requisitioned Land (Continuance of Powers)(Bombay Amendment) Act, 1951 (Bom. I of 1951), has continued the Central Act of 1947 in so far as the latter Act relates to matters with respect to which the State Legislature has power to make laws till 1st April 1953,Section 3 of the Bombay Act provides that references in the Central Act of 1947 to requisitioned land shll be construed as references to such land which, after the commencement of the Constitution, could have been requisitioned by the State Government and references to a propriate Government shall in relation to such requisitioned Land be construed as references to the State Government .The lands in question would therefore continue to be requisitioned as if they were requisitioned by the State Government. That being so, the expression "appropriate Government " in section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, will have to be construed as the State Government.

Under these circumstances, the State Government would be competent to acquire the said lands under section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, as amended by Bom. I of 1951 , but Government will have to start with the acquisition proceedings before the

expiry of the Act, i.e. before 31st March 1953 . under section 2 of Bom. I of 1951 the provisions of the Requisitioned Land (Continuance of Powers)Act, 1947 , in so far as it relates to matter with respect to which the State Legislature has power to make laws, shall continue to remain in force after the 31st March 1951 ans shall cease to have effect on the 1st day of April 1953, except as respect things already done or omitted to be done before the expiration thereof and section 7 of the Bombay General Clauses Act, 1904, shal l apply upon the expiry of the sid Act as if it hasdthen been repealed by the Bombay Act. It will thus be seen that if any acquisition proceedings have been started or are in progress before the expiry of the Act, i.e. before 1-4-1953, it will be possible to complete the same even after the expiryof the said Act, in virtue of thespecific application of the provisions of section 7 of the Bombay General Clauses Acr.

Id/-
dt/- 25-10-

Additional Secretary to Government.

U.R. to R.D. No. 1146/B-Confl. dated the 27th October 1952.

V.V.K. 28/6/56/
5C.